REMARKS

No claims have been canceled. Claims 3, 4, and 5 have been amended. New claims 6, 7, and 8 have been added. Claims 3-8 are now in the application

Applicant submits that no new matter has been added in amending Claims 3, 4 and 5. Support for the amendments to Claims 3, 4 and 5 is found in paragraph 2 of the specification as filed, in the flowchart in the specification as filed, and elsewhere. Support for new Claims 6, 7, and 8 is also found in paragraph 2 of the specification as filed, in the flowchart in the specification as filed, and elsewhere.

Reconsideration of the application is respectfully requested in light of the foregoing amendments and the following remarks.

Rejection of Claims under 35 U.S.C. § 112

Claims 3, 4, and 5 stand rejected under 35 U.S.C. § 112 as failing to comply with the written description requirement. Applicant does not admit that this Rejection is proper, but in a good faith effort to move the case to allowance, herein amends Claims 3, 4, and 5 which further clarifies Applicant's full possession of the invention at the time of filing.

Amended Claim 3 now recites pre-smokehouse prepared meat in lieu of "uncooked meat," and recites seasonings and additives in lieu of flavorings and preservatives. Other amendments have been made to Claim 3 to e.g. correct various typographical errors. The rejection to Claim 3 is thus obviated by the amendment.

Amended Claim 4 now recites in the preamble a "dried, smoked and cooked meat product made by smoking and cooking an unsmoked and uncooked mixture, wherein such unsmoked and uncooked mixture comprises, by weight...." This changed language in the preamble obviates the rejection to Claim 4.

Amended Claim 5 now recites in the preamble a "dried, smoked and cooked meat product made by smoking and cooking an unsmoked and uncooked mixture, wherein such

unsmoked and uncooked mixture consists essentially of, by weight...." This changed language in the preamble obviates the rejection to Claim 5.

For these reasons, and for reasons stated elsewhere herein, Applicant respectfully request that the rejections to Claims 3, 4, and 5 be withdrawn and that Claims 3, 4, and 5 be allowed.

Rejection of Claims under 35 U.S.C. § 103(a)

Claims 3, 4, and 5 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Pews in view of Uozumi or Lee et al. Applicant respectfully traverses the rejections. In addition, Claims 3, 4, and 5 are herein amended, which obviates the rejections

Amended Claim 3 now recites (in part):

(e) drying, smoking, and cooking the formed articles to an internal temperature of 175 degrees F in a heated smokehouse until the articles having desired shapes become dried, kippered, or jerky in constitution.

None of the references of record, separate or combined, teach or suggest smoking AND COOKING an extruded mixture, which is formed into formed articles, in a smokehouse. In particular, none of the references of record, separate or combined, teach or suggest smoking and cooking an extruded mixture in a smokehouse until the articles having desired shapes become dried, kippered, or jerky in constitution.

Rather, the references of record actually *teach away* from smoking and cooking in a smokehouse to realize a method of making a dried, kippered, or jerky, meat food product. As one example, Pews teaches sausages which are hot-smoked. Sausages are NOT dried, kippered, or jerky, meat. In other words, the sausages of Pews are smoked, not dried, smoked and cooked. By merely smoking, and not drying, smoking, and cooking, the sausages of Pews REMAIN SAUSAGES. To modify the sausages of Pews to somehow

arrive at a dried, kippered, jerky meat product would render the Pews invention unsatisfactory for its intended purpose of providing a sausage product.

The same can be said for the Uozumi and Lee et al (hereinafter Lee). Namely, a stated purpose of Uozumi is to "provide the subject meat paste food containing an outer shell, a stuffed material and FURIKAKE...having soft and smooth texture..." (Abstract, Uozumi Reference). To modify the meat paste food of Uozumi to somehow arrive at a dried, kippered, jerky meat product would render the Uozumi invention unsatisfactory for its intended purpose of providing a food having soft and smooth texture.

Stated objectives of Lee include to "provide a filled or stuffed pasta or dough product" and to "provide a process for preserving stuffed pasta." Modify the filled pasta product of Lee, to somehow arrive at a dried, kippered, jerky meat, renders Lee unsatisfactory for its intended purpose of providing such filled pasta products.

There is simply no motivation, express or implied, to modify the references of record to arrive at a method step of drying, smoking, and cooking the formed articles to an internal temperature of 175 degrees F in a heated smokehouse until the articles having desired shapes become dried, kippered, or jerky in constitution.

Accordingly, Applicant respectfully requests that the rejection be withdrawn, and that amended Claim 3 be allowed.

Amended Claim 4 now recites:

> A dried, smoked, and cooked meat product made by drying, smoking and cooking an unsmoked and uncooked mixture, wherein such unsmoked and uncooked mixture comprises, by weight:
>
> (a) 55% to 75% by weight pre-smokehouse prepared meat;
> (b) 10% to 20% by weight dried fruit;
> (c) 10% to 20% by weight nuts and/or seeds; and
> (d) 5% seasonings and additives.

Again, none of the references of record, separate or combined, teach or suggest a dried, smoked, and cooked meat product in any regard. And the references of record particularly fail to teach or suggest a dried, smoked, and cooked meat product having the above-stated "by weight" constituents. In the Office Action dated 11/10/2004, the Examiner states that it would have been obvious to include nuts or seeds, of Uozumi or Lee, to the product of Pews. The Examiner further states that optimization of these components would require nothing more than routine experimentation by one reasonably skilled in this art.

With respect, Applicant strongly disagrees with the Examiner's proposition. It appears that the rejection was made on the basis of "obvious to try," which is not the standard. Pews expressly teaches adding fruit juice, gelatin, herbs and other components to the mixture. How does one select fruits from the Pew list of mixture components? And then, how does one arrive at, for example, any particular "by weight" percentage from the references?

Likewise, Uozumi recites a list of mixture components, none of which are expressly or impliedly any more desirable for admixture. Namely, why select nuts and fruits from Uozumi over, for example, vegetables, beans, fish, shellfish, table luxuries, and dairy products which are also taught by Uozumi? And then, in what "by weight" amount for each selected?

To further complicate the matter, even if it is appropriate to combine Uozumi or Lee into Pews in the way proposed by the Examiner, and Applicant expressly asserts that it is not, there is simply no motivation, express or implied, to modify the "meat paste food containing an outer shell" of Pews to somehow arrive at a dried, smoked, and cooked meat product. And there is especially no motivation, express or implied to modify such combination to arrive at a dried, smoked, and cooked meat product having the particular constituents, at the claimed "by weight" percentages.

Amended Claim 5 now recites:

> A dried, smoked, and cooked meat product made by drying, smoking and cooking an unsmoked and uncooked mixture, wherein such unsmoked and uncooked mixture consists essentially of, by weight:
>
> (a) 55% to 75% by weight pre-smokehouse prepared meat;
> (b) 10% to 20% by weight dried fruit;
> (c) 10% to 20% by weight nuts and/or seeds; and
> (d) 5% seasonings and additives.

Amended Claim 5 is an analog of amended Claim 4. Accordingly, the arguments made with respect to Claim 4 are equally applicable to Claim 5, and will not be repeated here.

The Examiner also refers to the In re Levin decision in the rejections, no doubt because the decision contains language about "recipes." However, Applicant respectfully points out that a *prima facie* case of obviousness must be established under Graham v. John Deere Co., which the Examiner cannot do in light of the references of record and the amendments herein.

Applicant therefore respectfully requests that the rejections to Claims 4 and 5 be withdrawn and Claims 4 and 5 be allowed.

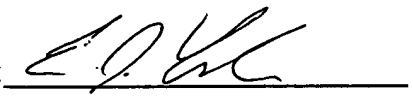
New Claim 6, 7, and 8 are allowable as depending from allowable amended Claim 3 and on their own merits. For example, Claim 6 further recites "wherein the step of forming the aged mixture into articles having desired shapes comprises extruding the mixture through a flattened horn." And Claim 7 further recites "wherein the extruded mixture is formed into individual strips having a length dimension of about 7 inches and a width dimension of about 1 inch." Thus, Applicant respectfully requests the allowance of Claims 6, 7, and 8.

A check in the amount of $510 is enclosed to pay the fee for the 3-month extension. No other fee is believed to be due. Should any other fee be properly due, or if any refund is due, kindly charge same, or credit any overpayment, to Deposit Account 23-2130.

Please feel free to contact me with any questions, comments or concerns, at the telephone number listed below.

Respectfully submitted,
Jeffrey Michael Fulbright

May 10, 2005

By: 

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